IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Civil Writ Petition No. 207 of 2004 (S/S)

Amit Joseph ……. Petitioner.

Versus

Joint Director of Education,
Kumaoun Region and others ……. Respondents.

With

Civil Writ Petition No. 155 of 2004 (S/S)

Rajendra singh …… Petitioner.

Versus

State of Uttaranchal and others …….
Respondents.

Date of decision: 27, October 2004

For the approval of:

Hon'ble Mr. Justice P.C. Pant.

- Whether the order/judgment should be sent to the
Reporters for reporting? (yes)

- Whether the reporters be allowed to see the judgment? (yes)

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Writ Petition No. 207 of 2004 (S/S)

Amit Joseph ……. Petitioner.

Versus

Joint Director of Education,
Kumaoun Region and others
and others ……. Respondents.

Mr. S. N. Babulkar, Senior Advocate assisted by
Mr. B.S. Adhikari, learned counsel for the petitioner.
Dr. Udyog Shukla, learned counsel for respondent Nos. 3 & 4.
Mr. Subhash Upadhyaya, learned Standing Counsel for State.

ALONG WITH

Civil Writ Petition No. 155 of 2004 (S/S)

Rajendra Singh …… Petitioner

Versus

State of Uttaranchal,
Through the Secretary (Education),
Uttaranchal Shashan, Dehradun
and others …… Respondents

Mr. Manoj Tiwari, learned counsel for the petitioner.
Dr. Udyog Shukla, learned counsel for respondent Nos. 4.
Mr. Subhash Upadhyaya, learned Standing Counsel for State.

Hon'ble Prafulla C. Pant, J.

In the above two petitions, common questions of law and facts are involved; as such these are being disposed of by this common judgment.

2) Brief facts of the case are that Dwarahat Inter College, Dwarahat, District Almora (hereinafter for short the College) is a minority Educational Institution aided by the State Government.

The U.P. Intermediate Education Act, 1921 and Rules framed there under are applicable to the said Institution. The Manager of the College invited applications for the post of lecturer in Chemistry through advertisement in newspaper (copy of which is annexed as Annexure- 1 to writ petition No. 155 (S/S) of 2004). Candidates including the petitioners of both the writ petitions mentioned above, applied for the post in response to the advertisement and were called for interview by the Manager of the College. The Selection Committee interviewed the candidates including Shri Rajendra Singh and Sri Amit Joseph on 26.09.2003. Sri Rajendra Singh's case is this that he secured highest marks i.e. 230 as against 206 secured by Sri Amit Joseph, second position holder. However, the Manager of the College sent name of Sri Amit Joseph to District Education Officer, Almora for approval for his appointment on the post of lecturer in Chemistry. Therefore, Sri Rajendra Singh has filed writ petition No. 155 (S/S) of 2004 and sought a mandamus directing the Manager of the College to send his name for approval to the District Education Officer and has further sought direction for his appointment on the post of lecturer in Chemistry in the College. On the other hand, Sri Amit Joseph in the writ petition No. 207 (S/S) of 2004 has sought writ in the nature of mandamus directing the Management and the District Education Officer, Almora to pay him the salary for the post of lecturer in Chemistry with the averments that he was duly selected on the post and has joined his duties on 03.02.2004 in the College.

3) On behalf of the District Education Officer, Almora counter affidavit has been filed in both the writ petition in which it has been stated that the approval for appointment has not been given to the Management of the College for they have ignored the claim of the candidate, who secured higher marks. The District Education Officer has asserted that he has put objection on the pay bill of Sri Amit Joseph as his appointment is allegedly against the provisions of the U.P. Intermediate Education Act,

1921. In the supplementary counter affidavit filed on behalf of the District Education Officer, it is stated that disapproval has been intimated to the Management vide letter dated 10.02.2004 relating to the impugned appointment.

4) The Manager of the College has filed its counter affidavit in both the writ petitions stating that due to some clerical mistake incorrect marks (i.e. 206) were shown against the name of Sri Amit Joseph who actually had secured 236 marks, as against 230 secured by Sri Ranjendra Singh. The District Education Officer when raised objection in this regard, he was immediately informed about the mistake and the correct statement as to marks obtained by the candidates was communicated to him. However, the District Education Officer failed to approve or disapprove the appointment within a period of 30 days required under Regulations 17(g) contained in Chapter II of Rules framed under the U.P. Intermediate Education Act, 1921, and the approval is deemed to have been given under said Clause, as such the appointment of Sri Amit Joseph on the post of lecturer in Chemistry is stated to be in accordance with the rules and law. Clarifying the mistake, the Manager of the College in his counter affidavit has stated that in the selection report sent to the District Education Officer by one of the Members of the Selection Committee marks awarded to Amit Joseph were shown to be 68 while actually it was 98 given by said Member. As such the mistake percolated in the impugned total i.e. 206.

5) I heard learned counsel for the parties and perused the affidavits, counter affidavits rejoinder affidavits and supplementary affidavits along with the annexures annexed thereto by the parties. I also perused the original record relating to marks given by Members in the interview, which was made available by the Management.

6) The controversy for consideration before this Court is four-fold:

1. Whether, there has been a bonafide mistake in communicating correct marks to the District Education Officer with regard to Sri Amit Joseph for seeking approval of his appointment?

2. Whether, Sri Ranendra Singh (petitioner of writ petition No. 155 (S/S) of 2004) has wrongly been denied appointment to the post in question?

3. Whether, Sri Amit Joseph (petitioner of writ petition No. 207 (S/S) of 2004) is validly appointed on the impugned post and is he wrongly denied salary of said post? and

4. Whether, the approval is deemed to have been given by the District Education Officer by not disapproving the appointment recommended, within a period of one month. If so, has the disapproval given by the said officer on 10.02.2004 (i.e. after four months) is no disapproval in the eyes of law?

7) Admittedly, a post of lecturer in Chemistry fell vacant in Dwarahat Inter College, Dwarahat for which advertisement was made inviting applications from the qualified persons. It is also not disputed that Dwarahat Inter College, Dwarahat is a minority Institution (run by body of Methodist Educational Service of the North India consists of Bishop of the Methodist Church, Bareilly). It is also not denied that the candidates, including the petitioners of both the above writ petitions, appeared for interview before the Selection Committee on 26.09.2003. The main dispute revolves round the point–what marks were obtained by Sri Amit Joseph (petitioner of writ petition No. 207 (S/S) of 2004) as against Sri Rajendra Singh (petitioner of writ petition No. 155 (S/S) of 2004). As far as the marks obtained by Sri Rajendra Singh is concerned, it is admittedly 230. But the marks obtained by Sri Amit Joseph are in dispute. As per the chart (copy Annexure C.A. 1 to the counter affidavit of the District Education Officer, Almora) submitted at the time of seeking the

approval for appointment of Sri Amit Joseph, to the District Education Officer by the Manager of the College, marks obtained by the candidates were shown to be as under:

Sl. No.	**Name of the candidate**	**Chairman**	**Manager**	**Principal**	**Member (Rev. B.B. Lal Absent**	**Member (Rev. Anuj Massey**	**Total**	**Result**
1	Kaushal Kishor	27	26	21	-	16	90	
2	Amit Joseph	51	55	32	-	68	206	**I**
3	K.D. Joshi	A	A	A	-	A	-	Absent
4	Raees Ahmad	A	A	A	-	A	-	Absent
5.	D.S. Bisht	A	A	A	-	A	-	Absent
6.	Rajendra Singh	49	52	70	-	59	230	**II**
7.	K.C. Jangi	34	32	22	-	43	131	
8.	N.C. Joshi	A	A	A	-	A	-	Absent
9.	R.C. Joshi	32	30	23	-	32	117	
10.	S.P. Pant	36	45	55	-	25	161	**III**

The above chart was sent by the Manager of the College seeking approval for appointment vide its letter dated 27.09.2003 (copy Annexure S.C.A. 1 to the supplementary counter affidavit filed on behalf of the District Education Officer in writ petition No. 207 (S/S) of 2004), on which the District Education Officer raised objection vide its letter dated 01.10.2003 (copy Annexure S.C.A. 2 to the same supplementary counter affidavit) in which it was pointed out that the candidate obtaining 230 marks has been shown second position holder as against the person shown obtaining lesser marks i.e. 206, and further some other clarifications were sought also form the Management. The

Manager in response to said query gave a reply dated 20.10.2003 (copy Annexure- 1 to the counter affidavit filed on behalf of the Manager of the College in both the writ petitions) in which it is sought to be clarified that marks given by one Member namely, Sri Anuj Massey to Amit Joseph were infect 98 and by mistake it was shown in the chart to be 68 which resulted in the mistaken total of the marks. In said letter dated 20th October 2003, the Manager of the College also requested the District Education Officer that if he is still not satisfied, he may disapprove the proposal so that the post may be published afresh for the purposes of recruitment of lecturer of Chemistry. However, it appears that the District Education Officer failed either to approve or to disapprove the proposal sent by the Management of the College within a period of one month. This Court perused the original table of the marks awarded to the candidates by each Member of the Selection Committee and found that there is error in the chart sent to the District Education Officer, who should have accepted the explanation of the College and of unsatisfied he should have disapproved the appointment within the time prescribed under the Rules. The photocopies of the original table sheet, of each Member who awarded marks to the candidates is annexed as Annexure- 1 to the supplementary counter affidavit filed by the Manager of the College (in writ petition No. 155 (S/S) of 2004). This clearly shows that the actual marks obtained by Amit Joseph were 98 and not 68 as shown in the table submitted to the District Education Officer with letter dated 27.09.2003. The photocopy annexed with said counter affidavit at its page 5 shows that awarded by Sri Anuj Massey are signed by Mr. B.B. David, Principal of the College; Mr. Rajeev Massey, Manager of the College and by other Members. As such, the original document which was also produced at the time of arguments cannot be said to be a forged one or concocted one. It raises no dispute as to its correctness. As such in the opinion of this Court, there appears to be a bonafide mistake in

communicating the marks of Amit Joseph as 206 instead of 236. Accordingly, the controversy as to the point No. 1 can very well be decided in favour of Amit Joseph for whom approval was sought by Management of the College, for appointment against the post of lecturer in Chemistry. For the same reasons it cannot be said that Sri Rajendra Singh (petitioner of writ petition No. 155 (S/S) of 2004) was wrongly denied appointment to the post in question. Therefore, the second point of controversy is also decided against him.

8. Now, this Court has to see validity of appointment of Amit Joseph, particularly with regard to the deemed approval of District Education Officer, alleged by him. In this connection, it is pertinent to mention Clause (g) of Regulations 17 of Chapter II of the Rules framed under the U.P. Intermediate Education Act, 1921, which reads as under:

> "किसी पद के लिए समस्त अभ्यर्थियों का साक्षात्कार कर लिए जाने के पश्चात् चयन समिति का सभापति, किये गये चयन की कार्यवाहियों पर दो प्रतियों में एक टिप्पणी तैयार करायेगा जिसमें चुने गये अभ्यर्थियों का नाम तथा प्रतीक्षा सूची के दो अन्य अभ्यर्थियों के नाम उल्लिखित किये जायेंगे। इस प्रकार तैयार की गयी टिप्पणी पर चयन समिति के सभापति तथा अन्य सदस्य हस्ताक्षर करेंगे तथा अपना – अपना पूर्ण नाम, पद और पता तथा दिनांक उल्लिखित करेंगे। सभापति इस टिप्पणी की एक प्रति तथा विनिमय 10 के खंड (च) निर्दिष्ट विवरण की एक प्रति धारा 16– चच के अधीन यथा अपेक्षित अनुमोदन के लिए यथा स्थिति, सम्भागीय उप–षिक्षा निदेषक को तुरन्त अग्रसारित करेगा। सम्बन्धित अभिलेखों के प्राप्त होने के दिनांक के एक माह के भीतर यथा स्थिति उपषिक्षा निदेषक या निरीक्षक, उस पर अपना निर्णय दे देंगे और ऐसा न करने पर अनुमोदन प्रदान कर दिया गया समझा जायेगा।"

The above mentioned Clause makes it clear that the District Education Officer (earlier known as District Inspector of Schools) is required to make his approval or his disapproval,

within a period of one month whereafter the approval shall stand to have been given. This Clause applies to the minority Institutions. Admittedly, the District Education Officer have not informed to the College of his approval or disapproval within a period of one month. Mr. Manoj Tiwari, learned counsel for Sri Rajendra Singh argued that since clarification were sought from time to time, as such the deeming clause would not get attracted to the present case. However, I am unable to agree with the submissions of learned counsel for the reason that it is not a case where the Management has not sent clarification within a period of one month. Rather as discussed above, vide letter dated 20.10.2003 the clarification as desired, were already submitted to the District Education Officer well in time. As such, giving disapproval vide letter dated 10.02.2004 (copy Annexure S.C.A. 6 to the supplementary counter affidavit to the writ petition No. 207 (S/S) of 2004) after a period of five months, in the opinion of this Court, is no disapproval in the eyes of law, for the reason that, acting on the deeming clause the Management after waiting for four months made appointment of Amit Joseph, who joined his duties on 03.02.2004 (copy Annexure- 2 to the writ petition No. 207 (S/S) of 2004).

9) Mr. Manoj Tiwari, learned counsel for Sri Rajendra Singh, submitted that Sri Amit Joseph was son of Sri Hemant Joseph, who was earlier Member of the Management Committee, as such his selection cannot be said to be a fair one. I see little force in his contention for the reason that from the record it appears that before the impugned selection took place, Sri Hemant Joseph resigned from the Membership of the Management Committee and did not participate in the selection process, as such no more fairness could have been shown by father of Amit Joseph. The information given at point No. 5 by the Manager of the College to the District Education Officer is mentioned in the reply dated 20.10.2003 (copy Annexure- 1 to the counter affidavit of the Manager in writ petition No. 155 (S/S) of 2004) whereby it has

been clarified that Sri Hemant Joseph had resigned on 7th September 2003 i.e. about some 19 days before the interview took place. For the reasons as above, this Court is of the opinion, that the appointment of Sri Amit Joseph on the post of lecturer in Chemistry in Dwarahat Inter College, Dwarahat is valid and also stands approved under the deeming Clause 17(g) of Regulations 17 of Chapter II of Rules framed under the U.P. Intermediate Education Act, 1921. Accordingly, both the points of controversy No. 3 and 4 also stand decided in favour of Sri Amit Joseph.

10) In the circumstances and in view of the above discussion, the writ petition No. 155 (S/S) of 2004 is liable to be dismissed while the writ petition No. 207 (S/S) of 2004 deserves to be allowed. Accordingly, writ petition No. 207 (S/S) of 2004 is dismissed and the writ petition No. 207 (S/S) of 2004 is allowed. Respondents of said writ petition are directed to make payment of salary to Sri Amit Joseph w.e.f. 03.02.2004. No order as to costs.

(Prafulla C. Pant, J.)

Dt: October 27, 2004
H.Negi